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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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13 IN RE HYDROXYCUT
14 MARKETING AND SALES
PRACTICES LITIGATION

CASE NO. 09md2087 BTM (KSC)

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16 ANDREW DREMAK, on Behalf of
17 Himself, All Others Similarly
Situated and the General Public,

18 Plaintiff,

19 v.

20 IOVATE HEALTH SCIENCES
GROUP, INC., et al.,

21 Defendants.
22

CASE NO. 09cv1088 BTM(KSC)

**ORDER GRANTING REQUEST
FOR CLARIFICATION; DENYING
MOTION TO STRIKE
OBJECTION TO THE EXTENT
THAT IT ARGUES LACK OF
STANDING DUE TO FAILURE
TO SUBMIT CLAIM FORM**

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24 Plaintiff Andrew Dremak has requested clarification from the Court
25 regarding whether the Court has rejected Plaintiff's argument that Objector
26 Michelle Rodriguez lacks standing because she did not submit a claim form. The
27 Court **GRANTS** Plaintiff's request for clarification and **DENIES** Plaintiff's motion
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1 to strike Rodriguez's objection to the extent that Plaintiff relies on the argument
2 that Rodriguez lacks standing due to her failure to submit a claim form.

3 As pointed out by Plaintiff, the Ninth Circuit has held that an objector who
4 does not participate in a settlement lacks standing to challenge class counsel's
5 attorney's fees. See Rodriguez v. Disner, 688 F.3d 645, 660 n. 11 (9th Cir.
6 2012); Knisley v. Network Assoc., Inc., 312 F.3d 1123, 1128 (9th Cir. 2002). The
7 Ninth Circuit explains that such an objector lacks standing because "without a
8 stake in the common fund pot, a favorable outcome would not redress their
9 injury." Rodriguez, 688 F.3d at 660, n.11.

10 Here, however, Rodriguez not only challenges the attorney's fees but also
11 objects to the product component of the settlement, the monetary component of
12 the settlement, the restriction to one \$25 payment or one Product Bundle without
13 proof of purchase, and the *cy pres* provisions. The Court finds that although
14 Rodriguez does not have standing to object to the attorney's fees, and may not
15 have standing to object to the product component, monetary component, or the
16 proof of purchase requirements, she does have standing to object to the *cy pres*
17 distribution (if she purchased a Hydroxycut Product between May 9, 2006 and
18 May 1, 2009).


19 The *cy pres* doctrine allows a court to distribute unclaimed or non-
20 distributable portions of a class action settlement fund to indirectly benefit the
21 entire class. Six Mexican Workers v. Ariz.Citrus Growers, 904 F.2d 1301, 1305
22 (9th Cir. 1990). When employing the *cy pres* doctrine, unclaimed funds should
23 be put to their next best use, e.g., for "the aggregate, indirect, prospective benefit
24 of the class." Nachshin v. AOL, LLC, 663 F.3d 1034, 1038 (9th Cir. 2011)
25 (quoting Masters v. Wilhelmina Model Agency, Inc., 473 F.3d 423, 436 (2d Cir.
26 2007)). Thus, all members of the class, not just members participating in the
27 settlement, have an interest in the *cy pres* distribution.

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1 Even though Rodriguez did not submit a claim form, she may still benefit
2 from the *cy pres* distribution of remaining funds and has standing to object to the
3 *cy pres* provisions if she establishes that she is a member of the Settlement
4 Class. Accordingly, the Court will not strike Rodriguez's objections on the ground
5 that she did not file a claim to participate in the settlement distribution.

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7 **IT IS SO ORDERED.**

8 DATED: November 12, 2013

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10 BARRY TED MOSKOWITZ, Chief Judge
11 United States District Court
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